BAIL SLIP

The Appellant herein (viz.,)Murugaiyan, accused in SC.No.194/96 on the file of the II Additional Sessions Judge, Erode was directed to be released on bail as per order of this court dt:19.7.1999 and made in Crl.M.P.No.4991/99 in Crl.A.844/97 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2005

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE M.CHOCKALINGAM

Criminal Appeal No. 844 of 1997

Murugaiyan ... Appellant.

Vs

State rep. by
Inspector of Police,
Thalavadi Police Station,
Erode District. ... Respondent

Prayer: Appeal against the judgment passed by the learned II Additional Sessions Judge, i/c of Principal Sessions Judge, Erode, in S.C.No. 194 of 1996 dated : 25.6.1997.

For Appellant : Mr.I.C. Vasudevan

For Respondent : Mr.D.Jayakumar
Addl. Public Prosecutor.

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JUDGMENT

(Judgment of the Court was delivered by N. DHINAKAR,J)

The appellant, Murugaiyan, was charged along with Rangaraj. (The said Rangaraj was examined as P.W.2 by the learned Sessions Judge). He was tried before the learned II Additional Sessions Judge, In charge of Principal Sessions Judge, Erode, and the allegation against the appellant is that at 10.00 p.m. on 22.4.1992, he caused the death of Gnanasekaran, a Rural Welfare Officer of Thalavadi village, by cutting him with an aruval in the house bearing door No.215 at Thimbam village and later, removed

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the dead body with the help of Rangaraj and concealed the same in a forest, which was ½ a kilometer away on the northern side. The learned trial Judge, finding the appellant guilty under Sections 302 and 201 IPC., sentenced him to imprisonment for life for the former offence and five years rigorous imprisonment for the latter offence. The present appeal is against the said conviction and sentence.

2. The facts necessary to dispose of the appeal are briefly mentioned as follows:-

The deceased, Gnanasekaran, was working as a Rural Welfare Officer of Thalavadi village during the relevant period and P.W.1 is his wife. On Tuesday, the 21st April, 1992, the deceased, Gnanasekaran, left his house for his office after informing his wife, P.W.1. He did not return home. P.W.1, finding that her husband has not returned home, sent a telegram, Ex.P-1, on 3.5.1992 and received a reply, Ex.P-2, dated 5.5.1992 from the Office informing her that her husband had come to the Office on 22.4.1992 and left at about 7.00 p.m. on the same day and later, did not attend the office. She was also informed by the said letter that he did not attend the medical camp, which was held on 24.4.1992 and he did not also collect his pay for the month. On getting the letter dated 5.5.1992 from the authorities, P.W.1 went to Thalavadi Panchayat Union and on being advised by the officer, who was present there, went to Thalavadi Police Station at 10.00 a.m. on 8.5.1992 and gave a complaint, Ex.P-3, to P.W.14, the Head Constable. In the said complaint, she has alleged that her husband, who has left the house on 21.4.1992, did not return home till 8.5.1992 and requested the authorities to trace him. The said complaint was registered as a case in Crime No.63 of 1992 under the caption "Man Missing" by P.W.14, the Head Constable, and thereafter, investigation was taken up by P.W.17, the Sub Inspector of Police, who was holding additional charge of Thalavadi Police Station.

3. P.W.17, on taking up investigation in the crime, examined P.W.1 and recorded a statement. He went to Chikkahalli and examined witnesses and thereafter, at Thimbam, he examined P.W.3 and one Krishnan and others. On examining P.W.3 and Krishnan, P.W.17 came to know that the missing Gnanasekaran has been murdered by the appellant and on reaching the police station on the next day, altered the crime to one under Section 302 IPC. and 201 IPC. The express report in the altered first information report is Ex.P-23. The investigation was, thereafter, taken up by P.W.18, the Inspector of Police, Thalavadi Police Station.

4. P.W.18, on taking up investigation in the crime on 9.5.1992, searched for the appellant and at 2.00 p.m., arrested him at Thimbam-Kollegal road. He was questioned. The statement given by the appellant was reduced into writing and it was attested by P.W.16 and another. In pursuance of the admissible portion of the

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said statement given by the appellant, the police party was taken by the appellant to a forest and pointed out a place, where the officer found the skeletal remains of Gnanasekaran. An observation mahazar, Ex.P-18, was prepared and a rough sketch, Ex.P-24, was drawn. The photograph of the skeletal remains were taken and M.O.20 series are the photographs and M.O.21 series are the negatives. He also seized the blood-stained earth, M.O.22, and sample earth, M.O.23, under a mahazar Ex.P.26 from the house of the appellant. Thereafter, inquest was conducted after summoning the Panchayatdars over the skeletal remains of Gnanasekaran. The inquest report is Ex.P-25 and at the time of inquest, P.W.1, Krishnan, P.W.3 and others were examined. After the inquest, a requisition was issued to the medical officer to go over to the scene of occurrence to conduct autopsy.

5. On receipt of the requisition, P.W.15, Assistant Surgeon attached to Government Hospital, Sathyamangalam, went to the place, where the skeletal remains were found, and conducted autopsy. He found the following:-

> "Highly decomposed partially skeletenised body was lying on its back. Dried skin was seen over the right thigh which is extending from the right gluteal region. This skin was covering the right femur in all sides. Dried skin with irregular edges was covering upper 1/3 of the left humerus both anterior and posterior aspect of left humerus. Skull was covered by scalp. The same dried skin was extending on the back of the neck and on the back of the chest and on the abdomen and over both gluteal region and on the sacrum. O/D of the skin on the right thigh maggots were seen on the inner part of the skin covering the right thigh. Eyes were absent. Tongue not seen, both lungs, and heart and vessels were not seen. Liver Spleen, both kidneys, intestines both small and large, pancreas, external genitelia were absent. Brain was absent. Few hairs were present on the scalp covering the skull. On the chest only manubrium sternum is present. Body of the sternum and xiphoid sternum were absent. All ribs present. All the ribs were skeletenised on the inner aspect all vertebrae were seen. Jaw was hanging. It got attached by a piece of dried skin from the scalp. In upper jaw right side last molar is missing. Others were present. In the upper jaw left side left first premolar left first molar and seemed molar were present. Other teeth were absent. In the lower jaw right side first incisor was missing. Other teeth

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were present. On the left side, 1st, 2nd incisors second premolar, third molar was missing. On the right side both tibia and fibula bone were seen. Calcaneum bone was present. On the left side femur bone is seen. Right humerus right ulna and right radius bones were seen. On the left side left radius and left ulna bones were seen. The lower 1/3 of the left radius and left ulna were missing. The inner aspect of the pelvic bone were seen. Both ears were intact."

The doctor issued Ex.P-14, the post-mortem certificate, reserving his opinion pending receipt of the chemical analyst and after the receipt of the chemical analyst, gave his final opinion, Ex.P-15, opining that he could not give any opinion as to the cause of death.

6. P.W.18, in the meantime, took the appellant and went to his house, where he prepared an observation mahazar. The appellant produced M.O.2, wrist watch, belonging to the deceased, along with a spade and a plastic can. They were seized under a mahazar Ex.P-22. At about 5.00 a.m. on 10.5.1992, an aruval, which was kept in the house of the appellant was also seized and at 1.30 p.m. on the same day, he seized few strands of hair, which were found stuck to the mud at Kadambur road. He arrested P.W.2 at about 5.00 p.m. on the same day. He gave a statement and the said statement was recorded. On 11.5.1992, he examined witnesses and at about 4.00 p.m., from a well, which was on the eastern side of the house of the appellant, took out documents belonging to the deceased, M.O.18 series, under a mahazar Ex.P-21 attested by P.W.16. On 14.5.1992 at about 3.00 p.m., M.Os.22 and 23, the blood-stained earth and sample earth, which were taken in a swab by the expert from the house of the appellant, were seized under a mahazar Ex.P-26. He examined P.W.10 who treated the appellant, and P.W.16, who conducted autopsy. On 8.7.1992, he obtained the photograph of the deceased from P.W.1. He sent the materials objects for analysis. P.W.18 sent the photograph of the deceased and the skull to the expert for superimposition test with his requisition. On receipt of the requisition along with the skull and the photograph of the deceased, P.W.13 conducted superimposition test and gave his opinion Ex.P-11, opining that the skull sent is the skull of the person found in the photograph, viz., the photograph of the deceased, Gnanasekaran.

7. Later, investigation was taken up by P.W.19, who examined P.W.10 on 21.1.1996 and filed the final report on 27.1.1996 against the appellant.

8. The appellant was questioned under Section 313 of the Cr.P.C. on the incriminating circumstances appearing against him.

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He denied all the incriminating circumstances. He did not examine any witness on his side.

9. The learned counsel appearing for the appellant submits that P.W.2 having been given pardon and taken as an approver, the trial Court was not justified in framing a charge against him and arraying him as an accused and in the above circumstances, the evidence of P.W.2 cannot be looked into, as it is the evidence of an accused, who was charged with an offence. It is the further submission of the counsel that even if the entire facts are taken to be true, it could be seen that the prosecution did not establish all the links in the chain of circumstances and the circumstances let in by the prosecution do not form a complete chain and therefore, the appellant is entitled for an acquittal. The counsel finally contends that since the doctor did not give any opinion as to the cause of death, the trial Court has committed an error in convicting the appellant for the offence of murder.

10. On the above contentions, we have heard the learned Additional Public Prosecutor.

11. We will now take up the second contention and the last contention together of the learned counsel for the appellant. Since, in our view, if the materials placed before the Court are sufficient to show that the deceased, Gnanasekaran, has met an unnatural end, then this Court cannot but come to the conclusion that the appellant caused the death of Gnanasekaran and death was on account of homicidal violence.

12. The prosecution, in order to establish that the deceased, Gnanasekaran, was murdered by the appellant, relied upon the evidence of P.W.1 to show that the deceased left his house on 21.4.1992 and did not return home. P.W.1, in her evidence, has stated that her husband left for his office as usual on 21.4.1992 and since he did not return home, she sent a telegram, Ex.P-1, for which, she received a reply, Ex.P-2. According to her, on receipt of the said reply, Ex.P-2, from the authorities, she went to the Office, where she was advised to give a complaint. A perusal of the letter, Ex.P-2, shows that the deceased, Gnanasekaran, attended office on 22.4.1992 and thereafter, he did not attend office and that he also did not attend the medical camp, which was conducted on 24.4.1992.

13. The fact that the deceased did not attend the medical camp is also spoken to by P.W.11. P.W.11, in his evidence, has stated that on 23.4.1992, the District Collector has visited Thimbam and though the deceased, Gnanasekaran, was directed on 22.4.1992 to be present at Asanur Panchayat Union on 23.4.1992, he was not present and that a complaint was made to him by the officials about the absence of the deceased, Gnanasekaran.

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14. The evidence of P.Ws.1 and 11 coupled with the two documents, Exs.P-1 and P-2, therefore, conclusively establish that Gnanasekaran left his house on 21.4.1992, attended office on 22.4.1992 and thereafter, did not attend office and was found missing. The evidence of P.W.1 further shows that a complaint, Ex.P-3, was given by her, which was registered as a case in Crime No.63 of 1992 under the caption "Man Missing".

15. In the above background, we will have to look at the evidence of P.W.3, who was running a tea stall at Thimbam. According to him, on 22.4.1992 at 9.00 p.m., the deceased went to his shop and asked for tiffin; but he could not give him any tiffin as the eatables were already sold. P.W.3, therefore, sent his boy and brought tiffin, which was taken by the deceased. P.W.3 has further stated that along with the deceased, the appellant was present and that thereafter, the appellant and the deceased went away from the place. This shows that at about 9.00 p.m. on 22.4.1992, the appellant was seen in the company of the deceased and it is for the appellant to explain as to what happened to the deceased after they left the tea stall of P.W.3. The appellant did not offer any explanation when he was examined under Section 313 of the Cr.P.C. except denying all the incriminating circumstances.

16. According to the prosecution, at 7.30 p.m. on a particular day, the appellant gave a statement to P.W.4. P.W.4, in his evidence, has stated that at about 7.30 p.m., when he was in front of his hotel, which he was running, the appellant, who went there and had taken food, informed him that he has murdered Gnanasekaran and later hidden the body with the assistance of P.W.2. P.W.4 was examined by the prosecution on 8.3.1992, that is, the date on which the complaint, Ex.P-3, was given by P.W.1, which was registered as a crime. At this juncture, we cannot but refer to the evidence of P.W.17, who, in his evidence, has stated that he examined P.W.3 on 8.5.1992 and also another witness by name Krishnan. Already we have referred to the evidence of P.W.17 wherein he has stated that after examining P.W.3 and Krishnan, he has altered the crime to one under Section 302 IPC. and 201 IPC. and thereafter, P.W.18, who took further investigation, went in search of the appellant and arrested him at about 2.00 p.m. on 9.5.1992. The evidence of P.W.4, therefore, shows that on the very day, when the complaint was registered as a crime, he was examined by the police officer and the crime was altered to one under Section 302 IPC. and at that time, the investigating agency knew that Gnanasekaran has been murdered and that the assailant is the appellant, as the appellant was arrested on the very next day, viz., on 9.5.1992, after the crime was altered to one under Section 302 IPC. We, therefore, do not find any reason to reject the evidence of P.W.4, who has categoric in his evidence that the appellant informed him that he has murdered the deceased, Gnanasekaran.

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17. The evidence of P.W.4 is also supported by P.W.7. P.W.7, in his evidence, has stated that at about 8.00 a.m. on a particular day, while he was taking tea, the appellant requisitioned his services and accordingly, P.W.7 went to the house of the appellant. According to him, he was asked to wash the floor in the room and that he found blood-stains and washed it. P.W.7, in his evidence, has further stated that when he asked appellant as to why there is foul smell emanating in the room, he was asked to mind his business by the appellant and that he was given Rs.10/- for the services rendered by him. The evidence of P.W.7, therefore, shows that there were blood stains in the house of the appellant and it was washed by him. This fact supports the prosecution case that the appellant has attacked the deceased in his house, as a result of which, the deceased suffered blood-stained injuries.

18. The next most telling circumstance is the evidence of P.W.18, who took up investigation after the crime was altered to one under Section 302 IPC. According to P.W.18, the Inspector of Police, after the appellant was arrested at 2.00 p.m., the appellant took him to a forest area and showed the place, where he found the skeletal remains. The skull, which was found at that place, was subjected to superimposition test by P.W.13 on the requisition of P.W.18, after the photograph of the deceased, M.O.1, was obtained from P.W.1 and P.W.13 had given his opinion, Ex.P-11, opining that the skull belongs to the deceased, Gnanasekaran, whose photograph was given to him for the purpose of conducting superimposition test. It is, therefore, clear that after the arrest, the appellant took the police officer and pointed out the place, where the dead body was found and in the circumstances, it is for the appellant to explain as to how the dead body came to be concealed in a place in the forest.

19. In STATE OF MAHARASHTRA -vs- SURESH (2000 SUPREME COURT (Crl.) 262, the Supreme Court held that three possibilities are there, when the accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by him. According to the Supreme Court, one is that he himself would have concealed it and second is that he would have seen somebody else concealing it and the third is that he would have been told by another person that it was concealed there. The Supreme Court went on to add that if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself and this is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by him and that such an interpretation is not inconsistent with the

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principle embodied in Section 27 of the Evidence Act.

20. The facts, which we have extracted above and which were brought out through the evidence of witnesses and the principles, which are laid down by the Supreme Court in the above judgment, therefore, conclusively show that the appellant took the police party and pointed out the place from where the dead body of the deceased was recovered and in the absence of an explanation by the appellant as to how the dead body was kept concealed there, this Court cannot but draw an adverse inference that it was the appellant, who murdered the deceased and concealed the dead body.

21. At this juncture, we have to state that there is no medical evidence as to the cause of death. We cannot but say that Gnanasekaran died on account of homicidal violence, since P.W.7 found blood stains in the room belonging to the house of the appellant and the subsequent recovery of the skeletal remains of the deceased, therefore, show that Gnanasekaran had been done to death in the house of the appellant and later, his body was kept concealed in a forest.

22. There is yet another piece of evidence connecting the appellant with the crime. After the arrest of the appellant, M.O.2, a wrist watch, was recovered under a mahazar from his house on the statement given by him. The said mahazar is Ex.P-22. It was attested by P.W.16 and another. The said watch was identified by P.W.1 as the watch belonging to her husband. The contention of the counsel for the appellant that P.W.1 could not have identified the said watch as the watch belonging to the deceased is to be stated only to be rejected. It is common knowledge that by regular use one could easily identify the articles belonging to him.

23. In PUBLIC PROSECUTOR -vs- INDIA CHINA LINGIAH AND OTHERS (1953 M.W.N. Cr. Page 282), a learned Single Judge of this Court, while dealing with similar contention, held that the articles, which are commonly used and which bear no particular identifying marks can be identified by persons on account of frequent sight of them and without any special attention to them as they make an impression on the mind. The learned Judge held that small and even nice points of difference distinguishing one thing from others of the same kind merely by the frequent sight of them and without any special attention to them make an impression on the mind. They are component parts of the thing and go to make the whole of which the mind receives an impression. This sort of impression, according to the learned Judge, is exceedingly common like a workman has it of his tools and most people have it of their dress, jewellery and other things they are frequently seeing, handling or using and it occurs every day that by remembrance of their general appearance a carpenter, mason or other workman recognises his tools; and dress or other property is known by its owner and undoubtedly animals and things may be identified by those familiar with them and

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observation teaches that such identification may be safely relied upon. The learned Judge went on to observe that at the same time a witness will not be able to formulate his reasons for the identification since it is based upon general untranslatable impressions of the mind and it is possible for a person to recognise his veshti, his cow, his wife's jewellery in the midst of a multitude of other things in most respects like them; but if questioned he will not be able to formulate any cogent or intelligent reason for the identification. Therefore, in view of the learned Judge, when it is found that respectable witnesses have identified their own articles of use merely by their frequently seeing, handling and using them, it is silly to reject their testimony on the ground that identification parades for these articles were not held and that reasons have not been formulated by these witnesses. The observations made by the learned Single Judge in the above judgment answer the contention raised by the learned counsel appearing for the appellant.

24. The above view of the learned Single Judge found favour with the Supreme Court in EARABHADRAPPA -vs- STATE OF KARNATAKA (AIR 1983 SURPREME COURT page 446). The Supreme Court took a view that it is a matter of common knowledge that ladies have an uncanny sense of identifying their own belongings, particularly articles of personal use in the family. Therefore, M.O.2, watch, being the watch belonging to her husband, and P.W.1, being the wife of the deceased, she could not have had any difficulty in identifying the same as the watch belonging to her husband, Gnanasekaran. In this background, we cannot but recollect that the appellant had no explanation to offer as to how he came to possession of the watch belonging to the deceased. The total denial and the non explanation for the possession of the watch are additional links in the chain of circumstances.

25. On the discussion made above, we hold that the appellant committed the murder of Gnanasekaran and later, concealed the dead body in a forest and therefore, he was justifiably convicted. Before we part with the judgment, we wish to tell that we have not taken into consideration the evidence of P.W.2, since he was charged under Section 201 IPC. after he was arrayed as second accused by the trial Judge. The trial Judge committed an error in framing a charge against him though he was not shown as an accused; but was shown as a witness in the final report filed by the investigating agency. The records also indicate that Rangaraj, who was initially arrested, after the investigation was taken up by P.W.18, was later examined under Section 164 Cr.P.C. by the learned Magistrate and that he was also given pardon so that he could give evidence as to what the appellant did to Gnanasekaran. Though P.W.2 was taken as an approver and cited as a witness, the trial Judge framed a charge against him under Section 201 IPC. by arraying him as an accused and committed a further error by examining the accused as a witness. Though we have not taken into consideration

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the evidence of P.W.2, as we have already stated, the evidence on record available against the accused is overwhelming in nature. We, therefore, find that the trial Judge was justified in convicting the appellant and sentencing him as stated above. The appeal deserves to be dismissed and it is, accordingly, dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

bs/

To

1. THE II ADDITIONAL SESSIONS JUDGE, ERODE DISTRICT.

2. -DO- THRO' THE PRINCIPAL SESSIONS JUDGE, ERODE.

3. THE JUDICIAL MAGISTRATE, SATHYAMANGALAM.

4. -DO- THEO' THE CHIEF JUDICIAL MAGISTRATE, ERODE.

5. THE JUDICIAL MAGISTRATE, NO.1, MADURAI.

6. -DO- THRO' THE CHIEF JUDICIAL MAGISTRATE, MADURAI.

7. THE INSPECTOR OF POLICE, THOLAVADI POLICE STATION.

8. THE SUPERINTENDENT, CENTRAL PRISON, COIMBATORE.

9. THE DISTRICT COLLECTOR, ERODE DISTRICT.

10. THE DIRECTOR GENERAL OF POLICE, MADRAS.

11. THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS.

One cc to Mr.I.C.Vasudevan, advocate (SR.No.23717)

Crl.A.No.844 of 1997

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